



General Assembly

February Session, 2008

Raised Bill No. 5758

LCO No. 2356

* ____HB05758BA____041508____*

Referred to Committee on General Law

Introduced by:
(GL)

AN ACT CONCERNING HOMEOWNER PROTECTION FROM FORECLOSURE.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 49-31d of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2008*):

3 (a) For the purposes of sections 49-31d to [49-31i] 49-31j, inclusive,
4 as amended by this act:

5 [(1) "Unemployed person" means a person who is unemployed for
6 purposes of chapter 567.]

7 [(2)] (1) "Homeowner" means a person who has [an] a legal or
8 equitable ownership interest in residential real property secured by a
9 mortgage, or is a mortgagor of a mortgage, which is the subject of a
10 foreclosure action, and who has [owned] had such interest and
11 occupied such property as his principal residence for a continuous
12 period of not less than two years immediately preceding the
13 commencement of such foreclosure action.

14 (2) "Residential real property" means property occupied as a

15 residence by a homeowner.

16 (3) "Restructured mortgage debt" means the adjustment by a court
17 of a mortgage debt to give protection from a foreclosure action.

18 (4) "Protection from foreclosure" means a court-ordered
19 restructuring of a mortgage debt designed to (A) eliminate an
20 arrearage in payments on such debt, and [to] (B) provide a period not
21 to exceed [six] twelve months during which foreclosure is stayed.

22 (5) "Lender" means any person who makes or holds mortgage loans
23 in the ordinary course of business and who is the holder of any [first]
24 mortgage on residential real estate which is the subject of a foreclosure
25 action.

26 (6) ["Underemployed"] "Protected person" means a [person whose
27 earned income during the twelve-month period immediately
28 preceding the commencement of the foreclosure action is (A) less than
29 fifty thousand dollars and (B) less than seventy-five per cent of his
30 average annual earned income during the two years immediately
31 preceding such twelve-month period] homeowner who is not current
32 on the payments required by his or her mortgage because of a
33 reduction in his or her income, an increase in the dollar amount of
34 such mortgage payments, or other good cause.

35 (7) "Restructuring period" or "period of restructuring" means the
36 period of time that a foreclosure action is stayed while the court
37 restructures the mortgage.

38 (b) Sections 49-31d to 49-31j, inclusive, as amended by this act, are
39 remedial in nature and shall be construed so as to implement their
40 remedial purpose.

41 Sec. 2. Section 49-31e of the general statutes is repealed and the
42 following is substituted in lieu thereof (*Effective October 1, 2008*):

43 (a) In an action by a lender for the foreclosure of a mortgage of
44 residential real property, such lender shall give notice to the

45 homeowner of the availability of the provisions of sections 49-31d to
46 [49-31i] 49-31j, inclusive, as amended by this act, at the time the action
47 is commenced.

48 (b) A homeowner who is given notice of the availability of the
49 provisions of sections 49-31d to [49-31i] 49-31j, inclusive, as amended
50 by this act, must make application for protection from foreclosure
51 within twenty-five days of the return day or of the date such
52 homeowner files an appearance in the action, whichever is later,
53 provided the court may extend the time for filing such application.

54 (c) No judgment foreclosing the title to real property by strict
55 foreclosure or by a decree of sale shall be entered unless the court is
56 satisfied from pleadings or affidavits on file with the court that notice
57 has been given to the homeowner against whom the foreclosure action
58 is commenced of the availability of the provisions of sections 49-31d to
59 [49-31i] 49-31j, inclusive, as amended by this act.

60 (d) If a homeowner against whom the foreclosure action is
61 commenced was not given notice of the availability of the provisions of
62 sections 49-31d to [49-31i] 49-31j, inclusive, as amended by this act, at
63 the time the action was commenced, and such homeowner was eligible
64 to apply for protection from foreclosure at such time, the court, upon
65 its own motion or upon the written motion of such homeowner, may
66 issue an order staying the foreclosure action for [fifteen] twenty-five
67 days during which period the homeowner may apply to the court for
68 protection from foreclosure by submitting an application together with
69 a financial affidavit as required by [subsection] subsections (a) and (b)
70 of section 49-31f of the 2008 supplement to the general statutes, as
71 amended by this act.

72 Sec. 3. Section 49-31f of the 2008 supplement to the general statutes
73 is repealed and the following is substituted in lieu thereof (*Effective*
74 *October 1, 2008*):

75 (a) Subject to the provisions of subsection (b) of this section, a
76 homeowner [who is underemployed or unemployed] against whom a

77 foreclosure action is brought may make application, together with a
 78 financial affidavit, to the court having jurisdiction over the foreclosure
 79 action for protection from foreclosure if: (1) The mortgage being
 80 foreclosed encumbers the residential real property, which property has
 81 served as such homeowner's principal residence, for a period of not
 82 less than two years, (2) such homeowner has not had a foreclosure
 83 [action commenced against such homeowner] judgment entered
 84 against him in regard to the residential real property owned by him in
 85 the preceding [seven-year] two-year period, and (3) such homeowner
 86 has not received an emergency mortgage assistance loan and has not
 87 applied for emergency mortgage assistance for two years before the
 88 application under the provisions of sections 8-265cc to 8-265ii,
 89 inclusive.

90 (b) [If the residential real property which is the subject of a
 91 foreclosure action is owned by more than one person, (1) no] (1) No
 92 homeowner shall be deemed [an unemployed] a protected person [or
 93 an underemployed person,] for the purposes of sections 49-31d to [49-
 94 31i] 49-31j, inclusive, as amended by this act, unless the aggregate
 95 [earned] income of all the homeowners of the residential real property
 96 which is the subject of such foreclosure action during the twelve-
 97 month period immediately preceding the commencement of the
 98 foreclosure action is less than [fifty thousand dollars and less than
 99 seventy-five per cent of the average aggregate annual earned income
 100 during the two years immediately preceding such twelve-month
 101 period for all such homeowners] one hundred fifty per cent of the
 102 median income for a four-person household for the area that includes
 103 the municipality in which the residential real property is located, as
 104 determined by the federal department of Housing and Urban
 105 Development, and (2) all homeowners of such property other than the
 106 homeowner making application in accordance with subsection (a) of
 107 this section shall file a financial affidavit in connection with such
 108 application.

109 (c) The court shall determine the eligibility of such homeowner for
 110 protection from foreclosure pursuant to the provisions of sections 49-

111 31d to [49-31i] 49-31j, inclusive, as amended by this act.

112 (d) In determining the eligibility of a homeowner for protection
113 from foreclosure under the provisions of sections 49-31d to [49-31i] 49-
114 31j, inclusive, as amended by this act, the court may consider any
115 relevant facts and shall consider:

116 (1) The likelihood that the homeowner will be able to make timely
117 payments on the restructured mortgage commencing at the end of the
118 restructuring period or will be able to refinance the mortgage by the
119 end of the restructuring period; and

120 (2) The presence of any specific facts indicating substantial prejudice
121 to the lender or any subordinate lienor or encumbrancer which would
122 result from a restructuring of the mortgage debt.

123 (e) If the court determines the equity the homeowner has in the
124 property and hears testimony from an appraiser produced by the
125 lender in connection with such determination, (1) the reasonable cost
126 of the appraisal and the appraiser's appearance as a witness shall be
127 part of the court costs to be added to the principal balance pursuant to
128 subdivision (4) of subsection (a) of section [49-31i] 49-31j, inclusive, as
129 amended by this act, if a restructuring order is granted, and (2) the
130 reasonable cost of such appraiser's appearance as a witness shall be
131 part of the taxable costs of the action, in addition to the taxable costs
132 for such appraisal and the appraiser's appearance as a witness at a
133 subsequent hearing for a judgment of foreclosure if such order is not
134 granted.

135 (f) If the court approves the application for protection from
136 foreclosure and restructures the mortgage debt, the foreclosure action
137 shall be stayed for the restructuring period. If, for a period of three
138 months following the end of the restructuring period, there are no
139 further proceedings to continue the foreclosure proceedings based
140 upon a default on the mortgage as restructured, the foreclosure action
141 shall be dismissed. The restructured mortgage debt shall have the
142 same priority as if it had been advanced at the time the mortgage was

143 delivered.

144 [(g) No homeowner who files a defense to any action for foreclosure
145 shall be eligible to make application for protection from such
146 foreclosure pursuant to the provisions of this section.]

147 Sec. 4. Section 49-31g of the general statutes is repealed and the
148 following is substituted in lieu thereof (*Effective October 1, 2008*):

149 [(a) If it determines that a homeowner who is an underemployed
150 person is eligible for protection from foreclosure pursuant to
151 subsections (a) and (c) of section 49-31f, the court in its discretion may
152 order the restructuring of the mortgage debt of such homeowner so as
153 to eliminate any arrearage in payments on the mortgage debt and may
154 allow a restructuring period not to exceed six months.]

155 [(b)] If it determines that a homeowner who is [an unemployed
156 person] a protected person is eligible for protection from foreclosure
157 pursuant to [subsection (a) of] section 49-31f of the 2008 supplement to
158 the general statutes, as amended by this act, the court shall order the
159 restructuring of the mortgage debt to eliminate any arrearage in
160 payments on the mortgage debt and shall order a restructuring period
161 not to exceed [six] twelve months.

162 Sec. 5. Section 49-31i of the general statutes is repealed and the
163 following is substituted in lieu thereof (*Effective October 1, 2008*):

164 (a) In determining the restructured mortgage debt, the court shall
165 add the following to the existing principal balance of the mortgage
166 debt: (1) All interest then due the lender and any interest that will be
167 earned to the end of any restructuring period, including interest on
168 any payments advanced by the lender during the restructuring period,
169 such interest to be computed at the rate provided in the mortgage note,
170 (2) real property taxes, (3) premiums for Federal Housing
171 Administration, Veterans' Administration and private mortgage
172 insurance, and (4) court costs, legal fees and any other sums the court
173 determines to be due under the terms of the mortgage indebtedness by

174 the court. The court shall then apply the composite interest rate as
 175 provided in subsection (c) of this section to such total restructured debt
 176 over the remaining term of the loan. In determining the restructured
 177 mortgage, the court may extend the term of the loan in order to
 178 accomplish the purposes of this act.

179 (b) The amount of the mortgage debt at the end of any period of
 180 restructuring shall in no event exceed either the amount of the original
 181 mortgage debt or [ninety] one hundred twenty per cent of the fair
 182 market value of the property as determined by an accredited real
 183 estate appraiser at the time of restructuring, whichever is greater. The
 184 provisions for restructuring the mortgage debt and staying the
 185 foreclosure shall apply only if the debt as restructured would not
 186 exceed such amount. Any sums added to the existing mortgage debt as
 187 a result of a restructuring order shall accrue interest at prevailing
 188 market rates after the conclusion of the restructuring period, which
 189 rate shall be either fixed or variable depending upon the underlying
 190 mortgage note.

191 (c) At the conclusion of the restructuring period, the new mortgage
 192 debt shall be computed based upon a composite rate of interest. The
 193 composite rate of interest shall be a weighted average of the original
 194 mortgage interest rate as to the principal balance and the prevailing
 195 interest rate as to all sums added to the principal balance to establish
 196 the total restructured mortgage debt, except that in the case of a
 197 flexible rate, variable rate or similar adjustable rate mortgage note, the
 198 [provisions of the underlying mortgage note for the redetermination of
 199 the interest rate on the mortgage shall continue to apply and remain in
 200 full force and effect during the remainder of the term of the mortgage]
 201 court may compute the rate of interest on the new mortgage debt
 202 based upon the current prevailing interest rate or at such other rate as
 203 the court deems fair and equitable.

204 Sec. 6. Section 49-31j of the general statutes is repealed and the
 205 following is substituted in lieu thereof (*Effective October 1, 2008*):

206 (a) The Banking Commissioner shall adopt such regulations, in
 207 accordance with chapter 54, as the commissioner deems necessary
 208 specifying (1) the manner in which a composite interest rate shall be
 209 computed for the new mortgage debt pursuant to subsection (c) of
 210 section [49-31i,] 49-31j, as amended by this act, and (2) the method or
 211 standard by which prevailing market rates of interest are to be
 212 determined.

213 (b) The Chief Court Administrator shall adopt and make available
 214 to the public (1) a form for the notice required to be given to
 215 homeowners pursuant to subsection (a) of section 49-31e, as amended
 216 by this act, which such form shall be designed so that the defendant
 217 may make application for relief under sections 49-31d to 49-31j,
 218 inclusive, as amended by this act, by returning such form to the clerk
 219 of the court, and (2) a form financial affidavit, as required by
 220 subsections (a) and (b) of section 49-31f of the 2008 supplement to the
 221 general statutes, as amended by this act. Such forms shall be in clear
 222 and simple language and format so as to be usable by litigants not
 223 represented by an attorney. [, and (3) a form a lender may use to give
 224 notice pursuant to section 49-31e to a homeowner of the availability of
 225 the provisions of sections 49-31d to 49-31i, inclusive.]

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2008	49-31d
Sec. 2	October 1, 2008	49-31e
Sec. 3	October 1, 2008	49-31f
Sec. 4	October 1, 2008	49-31g
Sec. 5	October 1, 2008	49-31i
Sec. 6	October 1, 2008	49-31j

GL *Joint Favorable*

JUD *Joint Favorable*

BA *Joint Favorable*